

MONTANA LEGISLATIVE HISTORY

Chapter 443 19 75
 Bill H _____ S 124

Original bill & history ☒ c

H. Committee on Judiciary
 Hearing Date(s) 3/10 ☒ c

_____ c

_____ c

_____ c

Date Out _____ c

S. Committee on Judiciary
 Hearing Date(s) 1/24 ☒ c

_____ c

_____ c

_____ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

1 Senate BILL NO. 124
2 INTRODUCED BY Roberts Cetrone
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION
5 94-2-101 (28), R.C.M. 1947, TO PROVIDE THAT AWARENESS OF THE
6 PROBABLE RESULT OF A PERSON'S CONDUCT CONSTITUTES
7 KNOWLEDGE."
8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10 Section 1. Section 94-2-101, R.C.M. 1947, is amended
11 to read as follows:
12 "94-2-101. General definitions. Unless otherwise
13 specified in the statute all words will be taken in the
14 objective standard rather than in the subjective.
15 (1) "Acts" has its usual and ordinary grammatical
16 meaning and includes any bodily movement, any form of
17 communication, and, where relevant, includes a failure or
18 omission to take action.
19 (2) "Another" means a person or persons as defined in
20 this code other than the offender.
21 (3) "Administrative proceeding" means any proceeding
22 the outcome of which is required to be based on a record or
23 documentation prescribed by law, or in which a law or a
24 regulation is particularized in its application to an
25 individual.

1 (4) "Benefit" means gain or advantage, or anything
2 regarded by the beneficiary as gain or advantage, including
3 benefit to any other person or entity in whose welfare he is
4 interested, but not an advantage promised generally to a
5 group or class of voters as a consequence of public measures
6 which a candidate engages to support or oppose.
7 (5) "Bodily injury" means physical pain, illness or any
8 impairment of physical condition and includes mental illness
9 or impairment.
10 (6) "Cohabit" means to live together under the
11 representation of being married.
12 (7) "Common scheme" means a series of acts or omissions
13 motivated by a purpose to accomplish a single criminal
14 objective, or by a common purpose or plan and which resulted
15 in the repeated commission of the same offense or affects
16 the same person or the same persons or the property thereof.
17 (8) "Conduct" means an act or series of acts, and the
18 accompanying mental state.
19 (9) "Conviction" means a judgment of conviction or
20 sentence entered upon a plea of guilty or upon a verdict or
21 finding of guilty of an offense, rendered by a legally
22 constituted jury or by a court of competent jurisdiction
23 authorized to try the case without a jury.
24 (10) "Correctional institution" means the state prison,
25 county or city jail, or other institution for the

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1 incarceration or custody of persons under sentence for
2 offenses or awaiting trial or sentence for offenses.

3 (11) "Deception" means knowingly to:

4 (a) create or confirm in another an impression which is
5 false and which the offender does not believe to be true; or

6 (b) fail to correct a false impression which the
7 offender previously has created or confirmed; or

8 (c) prevent another from acquiring information
9 pertinent to the disposition of the property involved; or

10 (d) sell or otherwise transfer or encumber property,
11 failing to disclose a lien, adverse claim, or other legal
12 impediment to the enjoyment of the property, whether such
13 impediment is or is not of value or is not a matter of
14 official record; or

15 (e) promise performance which the offender does not
16 intend to perform or knows will not be performed. Failure to
17 perform standing alone is not evidence that the offender did
18 not intend to perform.

19 (12) "Defamatory matter" means anything which exposes a
20 person or a group, class or association to hatred, contempt,
21 ridicule, degradation or disgrace in society, or injury to
22 his or its business or occupation.

23 (13) "Deprive" means to withhold property of another:

24 (a) permanently; or

25 (b) for such a period as to appropriate a portion of

1 its value; or

2 (c) with the purpose to restore it only upon payment of
3 reward or other compensation; or

4 (d) to dispose of the property and use or deal with the
5 property so as to make it unlikely that the owner will
6 recover it.

7 (14) "Deviate sexual relations" means sexual contact or
8 sexual intercourse between two (2) persons of the same sex,
9 or any form of sexual intercourse with an animal.

10 (15) "Felony" means an offense in which the sentence
11 imposed upon conviction is death or imprisonment in the
12 state prison for any term exceeding one (1) year.

13 (16) "A frisk" is a search by an external patting of a
14 person's clothing.

15 (17) "Forcible felony" means any felony which involves
16 the use or threat of physical force or violence against any
17 individual.

18 (18) "Government" includes any branch, subdivision or
19 agency of the government of the state or any locality within
20 it.

21 (19) "Harm" means loss, disadvantage or injury, or
22 anything so regarded by the person affected, including loss,
23 disadvantage or injury to any person or entity in whose
24 welfare he is interested.

25 (20) "He, she, it." The singular term shall include the

1 the plural and the masculine gender the feminine except
2 where a particular context clearly requires a different
3 meaning.

4 (21) "A house of prostitution" means any place where
5 prostitution or promotion of prostitution is regularly
6 carried on by one (1) person under the control, management
7 or supervision of another.

8 (22) "Human being" means a person who has been born and
9 is alive.

10 (23) "An illegal article" is an article or thing which
11 is prohibited by statute, rule, regulation or order from
12 being in the possession of a person subject to official
13 detention.

14 (24) "Inmate" means a person who engages in
15 prostitution in or through the agency of a house of
16 prostitution.

17 (25) "Intoxicating substance" means any substance
18 having an hallucinogenic, depressant, stimulating, or
19 narcotic effect, taken in such quantities as to impair
20 mental or physical capability including but not limited to
21 any beverage containing one-half of one per centum (1/2 of
22 1%) or more of alcohol by volume; provided, that the
23 foregoing definition shall not extend to dealcoholized wine,
24 nor to any beverage or liquid produced by the process by
25 which beer, ale, port or wine is produced, if it contains

1 less than one-half of one per centum (1/2 of 1%) of alcohol
2 by volume.

3 (26) "An involuntary act" means any act which is:

4 (a) a reflex or convulsion; or

5 (b) a bodily movement during unconsciousness or sleep;
6 or

7 (c) conduct during hypnosis or resulting from hypnotic
8 suggestion; or

9 (d) a bodily movement that otherwise is not a product
10 of the effort or determination of the actor, either
11 conscious or habitual.

12 (27) "Juror" means any person who is a member of any
13 jury, including a grand jury, impaneled by any court in this
14 state in any action or proceeding or by any officer
15 authorized by law to impanel a jury in any action or
16 proceeding. The term juror also includes a person who has
17 been drawn or summoned to attend as a prospective juror.

18 (28) "Knowingly"--A person acts knowingly with respect
19 to conduct or to a circumstance described by a statute
20 defining an offense when he is aware of his conduct or that
21 the circumstance exists. A person acts knowingly with
22 respect to the result of conduct described by a statute
23 defining an offense when he is aware that such result is
24 practically certain to be caused by his conduct. When
25 knowledge of the existence of a particular fact is an

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1 element of an offense, such knowledge is established if a
2 person is aware of a high probability of its existence.
3 Equivalent terms such as "knowing" or "with knowledge" have
4 the same meaning.

5 (29) "Mentally defective" means that a person suffers
6 from a mental disease or defect which renders him incapable
7 of appreciating the nature of his conduct.

8 (30) "Mentally incapacitated" means that a person is
9 rendered temporarily incapable of appreciating or
10 controlling his conduct as result of the influence of an
11 intoxicating substance.

12 (31) "Misdemeanor" means an offense in which the
13 sentence imposed upon conviction is imprisonment in the
14 county jail for any term, or fine, or both or the sentence
15 imposed is imprisonment in the state prison for any term of
16 one year or less.

17 (32) "Negligently"--A person acts negligently with
18 respect to a result or to a circumstance described by a
19 statute defining an offense when he consciously disregards a
20 risk that the result will occur or that the circumstance
21 exists; or if he disregards a risk of which he should be
22 aware that the result will occur or that the circumstance
23 exists. The risk must be of such a nature and degree that to
24 disregard it involves a gross deviation from the standard of
25 conduct that a reasonable person would observe in the

1 actor's situation. Gross deviation means a deviation that is
2 considerably greater than lack of ordinary care. Relevant
3 terms such as "negligent" and "with negligence" have the
4 same meaning.

5 (33) "Obtain" means:

6 (a) in relation to property, to bring about a transfer
7 of interest or possession, whether to the offender or to
8 another; and

9 (b) in relation to labor or services, to secure the
10 performance thereof.

11 (34) "Obtains or exerts control" includes but is not
12 limited to the taking, carrying away, or the sale,
13 conveyance, or transfer of title to, or interest in, or
14 possession of property.

15 (35) "Occupied structure" means any building, vehicle
16 or other place suited for human occupancy or night lodging
17 of persons or for carrying on business, whether or not a
18 person is actually present. Each unit of a building
19 consisting of two (2) or more units separately secured or
20 occupied is a separate occupied structure.

21 (36) "Offender" means a person who has been or is
22 liable to be arrested, charged, convicted or punished for a
23 public offense.

24 (37) "Offense" means a crime for which a sentence of
25 death or of imprisonment or fine is authorized. Offenses are

classified as felonies or misdemeanors.

(38) "Official detention" means imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society; but "official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(39) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or deposition in connection with such proceeding.

(40) "Other state" means any state or territory of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(41) "Owner" means a person, other than the offender, who has possession of or any other interest in the property involved, even though such interest or possession is

unlawful, and without whose consent the offender has no authority to exert control over the property.

(42) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts, or participates in directing or conducting party affairs at any level of responsibility.

(43) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(44) "Pecuniary benefit" is benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain.

(45) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

(46) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(47) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(48) "Premises" includes any type of structure or building and any real property.

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1 (49) "Property" means anything of value. Property
2 includes, but is not limited to, real estate, money,
3 commercial instruments, admission or transportation tickets,
4 written instruments representing or embodying rights
5 concerning anything of value, labor, or services, or
6 otherwise of value to the owner; things growing on or
7 affixed to, or found on land, or part of or affixed to any
8 building; electricity, gas and water; birds, animals and
9 fish, which ordinarily are kept in a state of confinement;
10 food and drink, samples, cultures, microorganisms,
11 specimens, records, recordings, documents, blueprints,
12 drawings, maps, and whole or partial copies, descriptions,
13 photographs, prototypes or models thereof, or any other
14 articles, materials, devices, substances and whole or
15 partial copies, descriptions, photographs, prototypes, or
16 models thereof which constitute, represent, evidence,
17 reflect or record secret scientific, technical,
18 merchandising production or management information, designed
19 process, procedure, formula, invention or improvement.

20 (50) "Property of another" means real or personal
21 property in which a person other than the offender has an
22 interest which the offender has not authority to defeat or
23 impair, even though the offender himself may have an
24 interest in the property.

25 (51) "Public place" means any place to which the public

1 or any substantial group thereof has access.

2 (52) "Public servant" means any officer or employee of
3 government, including but not limited to, legislators,
4 judges, and firemen, and any person participating as a
5 juror, advisor, consultant, administrator, executor,
6 guardian or court-appointed fiduciary; but the term does not
7 include witnesses. The term public servant includes one who
8 has been elected or designated to become a public servant.

9 (53) "Purposely"--A person acts purposely with respect
10 to a result or to conduct described by a statute defining an
11 offense if it is his conscious object to engage in that
12 conduct or to cause that result. When a particular purpose
13 is an element of an offense, the element is established
14 although such purpose is conditional, unless the condition
15 negatives the harm or evil sought to be prevented by the law
16 defining the offense. Equivalent terms such as "purpose" and
17 "with the purpose" have the same meaning.

18 (54) "Serious bodily injury" means bodily injury which
19 creates a substantial risk of death or which causes serious
20 permanent disfigurement, or protracted loss or impairment of
21 the function or process of any bodily member or organ and
22 includes serious mental illness or impairment.

23 (55) "Sexual contact" means any touching of the sexual
24 or other intimate parts of the person of another for the
25 purpose of arousing or gratifying the sexual desire of

1 either party.

2 (36) "Sexual intercourse" means penetration of the
3 vulva, anus or mouth of one person by the penis of another
4 person, or penetration of the vulva or anus of one person by
5 any body member of another person or penetration of the
6 vulva, or anus of one person by any foreign instrument or
7 object manipulated by another person for the purpose of
8 arousing or gratifying the sexual desire of either party.
9 Any penetration, however slight, is sufficient.

10 (57) "Solicit" or "solicitation" means to command,
11 authorize, urge, incite, request, or advise another to
12 commit an offense.

13 (58) "State" or "this state" means the state of
14 Montana, and all the land and water in respect to which the
15 state of Montana has either exclusive or concurrent
16 jurisdiction, and the air space above such land and water.

17 (59) "Statute" means any act of the legislature of this
18 state.

19 (60) "Stolen property" means property over which
20 control has been obtained by theft.

21 (61) "A stop" is the temporary detention of a person
22 that results when a peace officer orders the person to
23 remain in his presence.

24 (62) "Tamper" means to interfere with something
25 improperly, meddle with it, make unwarranted alterations in

1 its existing condition, or deposit refuse upon it.

2 (63) "Threat" means a menace, however communicated to:

3 (a) inflict physical harm on the person threatened or
4 any other person or on property; or

5 (b) subject any person to physical confinement or
6 restraint; or

7 (c) commit any criminal offense; or

8 (d) accuse any person of criminal offense; or

9 (e) expose any person to hatred, contempt or ridicule;

10 or

11 (f) harm the credit or business repute of any person;

12 or

13 (g) reveal any information sought to be concealed by
14 the person threatened; or

15 (h) take action as an official against anyone or
16 anything, or withhold official action, or cause such action
17 or withholding; or

18 (i) bring about or continue a strike, boycott, or other
19 similar collective action if the property is not demanded or
20 received for the benefit of the groups which he purports to
21 represent; or

22 (j) testify or provide information or withhold
23 testimony or information with respect to another's legal
24 claim or defense.

25 (64) (a) "Value" means the market value of the property

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at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value shall be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege or obligation shall be deemed the amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(b) When it cannot be determined if the value of the property is more or less than one hundred fifty dollars (\$150) by the standards set forth in subsection (64) (a) above, its value shall be deemed to be an amount less than one hundred fifty dollars (\$150).

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining

the value of the property.

(65) "Vehicle" means any device for transportation by land, water or air, or mobile equipment with provision for transport of an operator.

(66) "Weapon" means any instrument, article or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(67) "Witness" means a person whose testimony is desired in any proceeding or in any investigation by a grand jury or in a criminal action, prosecution or proceeding.

(68) "Without consent" means:

(a) the victim is compelled to submit by force or by threat of imminent death, bodily injury, or kidnapping, to be inflicted on anyone; or

(b) the victim is incapable of consent because he is:

(i) mentally defective or incapacitated; or

(ii) physically helpless; or

(iii) less than sixteen (16) years old."

-End-

44th

LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
121	1/18/75	1/24/75	2/10/75			2/10/75			
122	1/18/75	1/24/75	1/24/75	1/24/75					
123	1/18/75	1/24/75	1/24/75	1/24/75					
124	1/18/75	1/24/75	1/24/75	1/24/75					
125	1/18/75	1/28/75	2/25/75		as amend 2/24/75				
130	1/20/75	1/28/75	2/5/75	2/5/75					
134	1/20/75	1/27/75	2/5/75			2/5/75			
138	1/21/75	1/29/75	2/5/75			2/5/75			
143	1/21/75	1/30/75	2/5/75			2/5/75			
148	1/21/75	1/29/75	2/21/75			2/21/75			
153	2/1/75	2/18/75	2/24/75			2/24/75			
154	1/21/75	2/24/75	2/24/75	2/24/75					
161	1/21/75	1/30/75	2/1/75			1/30/75			
162	1/28/75	2/7/75	2/10/75			2/10/75			
172	1/22/75	2/4/75	2/21/75		2/21/75				
175	1/22/75	2/3/75	2/25/75			2/24/75			
176	1/24/75	2/3/75	2/10/75		2/10/75				

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
JANUARY 24, 1975

The meeting was called to order by Senator Towe, Chairman, at 9:36 a.m. in Room 442 of the Capitol Building.

The following bills were heard: SB 80
SB 120
SB 121
SB 122
SB 123
SB 124

SB 80 Senator Flynn, from District 48 and sponsor of the bill, introduced Robert Deschamps, Missoula County Attorney, who drafted the bill.

Mr. Deschamps stated this bill is patterned after statutes in thirteen states with primary work being done in liaison with the King County, Seattle, Washington, County Attorney's office. He said the bill provides for an investigative subpoena and also selective immunity based on testimony given. He gave two examples of cases where this bill would have aided greatly in investigation and prosecution of white collar crime.

SB 120 Senator Roberts, from District 11 and sponsor of the bill,
121 stated this package of bills was drawn up to correct some
122 oversights in the 1973 Criminal Code which could have
123 some negative results in interpretation and/or appeals.
124

Professor Larry M. Elison, University of Montana Law School presented testimony on the bills. His written statement is attached.

The hearing was closed and the Committee went into Executive Session.

SB 120 SENATOR TURNAGE MOVED SB 120 DO PASS. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

SB 121 SENATOR TURNAGE MOVED CONSIDERATION OF SB 121 BE PASSED FOR THE DAY FOR THE PURPOSE OF FURTHER DISCUSSION. THE MOTION CARRIED.

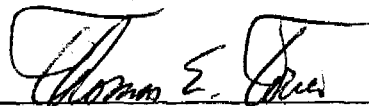
SB 122 SENATOR TURNAGE MOVED SB 122 DO PASS. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

MINUTES OF THE MEETING
PAGE 2

SB 123 SENATOR TURNAGE MOVED SB 123 DO PASS. THE MOTION CARRIED
UNANIMOUSLY ON A ROLL CALL VOTE.

SB 124 SENATOR TURNAGE MOVED SB 124 DO PASS. THE MOTION CARRIED
UNANIMOUSLY ON A ROLL CALL VOTE.

There being no further business, the meeting adjourned to reconvene
Saturday, January 25, 1975, at 9:30 a.m.



CHAIRMAN

ROLL CALL

Judiciary—COMMITTEE

44th

~~SECOND HALF~~ - 43rd LEGISLATIVE SESSION 1975

Date 1/24/75

[illegible]

Coll. No.

Bx/Fd No.

SB

BILL NO.

124

INTRODUCED BY _____

94-2-101 (28)

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 94-2-101(28), R.C.M. 1947, WHICH DEFINES THE TERM 'KNOWINGLY' BY PROVIDING THAT AWARENESS OF THE PROBABLE RESULT OF A PERSON'S CONDUCT CONSTITUTES KNOWLEDGE."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Section 94-2-101(28), R.C.M. 1947, is amended to read:

(28) "Knowingly." A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when he is aware that such result is practically certain to be caused by his conduct. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

EXPLANATION

The proposed addition to the definition of "knowingly" was inadvertently omitted from the Criminal Code of 1973. Without this additional language, there may be a dangerous loophole in Montana's Criminal Code.

The Illinois Code and the Model Penal Code, which provided the basic design for the Montana Criminal Code, both include a provision comparable to the addition here proposed. This design relies on the mental state of "purposely" or "knowingly" to define most crimes. The design necessarily ties the mental state to the defendant's conduct, or to his knowledge of facts or circumstances, or to his knowledge that certain conduct would cause a designated prohibited result.

Conduct, circumstances, facts, and result were the elements to which every mental state must somehow relate. Unfortunately, in defining "knowingly," the most critical (important) element, "result," was omitted. The proposed addition to the definition of "knowingly" is needed to make the definition complete.

The present definition relates "knowingly" to conduct, circumstances, and facts but not to result. Often, in the statutes defining crimes, it is required that the prosecution prove the defendant acted, knowing a particular result would occur. Since there is now no definition of "knowing as it relates to result," a potential loophole is created. The proposed addition would close any such loophole.

For example, in the case of deliberate homicide, it is necessary to prove that the defendant caused the death of a human being either purposely or knowingly. Since there is no definition of "knowingly" that relates to result (death, in this case), the prosecution might be forced to prove it was done on purpose or lose the case.

In sections 94-5-502 and 94-5-503, the required mental state is "knowingly." The result is sexual contact--or sexual intercourse. If the term "knowingly" as defined cannot be related to the prohibited result, sexual contact or sexual intercourse, there would be no crime and the culprit would escape solely because of an inadequate definition.

Coll. No. _____ Bx/Fd No. _____

SENATE COMMITTEE JUDICIARY

Date January 24, 1975 Senate Bill No. 124 Time _____

NAME	YES	NO
THOMAS E. TOWE	x	
JOE R. ROBERTS	x	
V.E. CETRONE	x	
MARGARET S. WARDEN	x	
ROBERT J. BROWN	x	
GLEN L. DRAKE	x	
JEAN A. TURNAGE	x	
MICHAEL GREELY	x	

Gill Robyana
Secretary

/s/ Thomas E. Towe
Chairman

Motion: Senator Turnage moved SB 124 DO PASS.

(include enough information on motion--put with yellow copy of committee report.)

JUDICIARY COMMITTEE

44th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 122	To clarify the type of property which must be damaged or destroyed to make the criminal act arson.	2/1/75	Roberts	3/17/75	BE CONCURRED IN	3/17/75
SB 123	An act which provides definitions of sexual crimes, by adding a definition of term "without consent", amending sections 94-2-101, etc.	2/1/75	Roberts	3/18/75 3/6/75	BE CONCURRED IN	3/21/75
SB 124	To provide that awareness of the probable result of a person's conduct constitutes knowledge.	2/1/75	Roberts	3/10/75	BE CONCURRED IN	3/10/75
HB 134	To create a presumption of intoxication & to remove the power of the Mt. Highway Patrol Board to suspend a driver's license.	2/3/75	James Moore	2/10/75	DO PASS AS AMENDED	2/10/75
HB 586	An act to provide a penalty for criminal possession of marijuana with intent to sell.	2/4/75	Babcock	2/21/75	DO PASS AS AMENDED	2/21/75
HB 587	An act defining the offense of criminal cultivation of marijuana; providing a penalty of up to 25 yrs of imprisonment, amending section 54-	2/4/75	Marks	2/21/75	2/21/75 tabled	

132, R.C.M. 1947

JUDICIARY COMMITTEE

March 10, 1975

The forty ninth meeting of the House Judiciary Committee was called to order in Room 436 of the Capitol Building at Helena, Montana on Monday, March 10, 1975 at 9:00 AM. Representative Herb Huennekens chairman, was absent, excused. All members were present except Representative Meloy, absent, excused. Representative James Moore, Vice-chairman, presided.

Bills scheduled for hearing this date were Senate Bills Nos. 2, 5, 4, 124 and 393 and they were heard in this order.

SENATE BILL NO. 2 Senator Antoinette Rosell, District #32, is chief sponsor of this act to generally revise certain statutes which discriminate on the basis of sex in order to remove the discrimination.

Senator Rosell stated this is an omnibus bill which came out of an interim committee study and is one of a package of twelve bills. Only minor changes are necessary to eliminate discrimination in the present law.

Debbie Schmidt, staff person with Legislative Council, stated this is a monumental bill as far as length, it deals with necessary but minor changes in the present laws. The committee went through various code sections and eliminated discriminatory language. An important aspect of the bill includes that pension benefits extend to include the spouse and not just the widow. According to the fiscal note there is negligible impact. The bill affects the composition of political committees, the chair and vice-chair must be of the opposite sex. The bill also effects a change in the law for forms for political candidates. In the present law a wife's political contributions are considered to be their own money. There is also a new section on page 86 which states that every word "man" will include "woman" from now on. It is basically accepted that eventually cosmetic changes will be made.

Proponent Margaret Davis, representing the League of Women Voters, stated that many changes are quite minor, others will affect citizens of Montana, and they support passage of this bill. Proponent Jan Gerke stated they support this bill.

Joan Woodgerd stated the secretary of state's office had a question on section 13 on page 27 and thinks maybe 23-3405 should be amended. This refers to precinct committee persons and there are five other sections of law that refer to precinct committee people that should be amended. Diana Dowling has a copy of these proposed amendments.

No opponents. Senator Rosell, in closing, stated that Representatives Yardley and Halvorson were quite helpful in putting this bill together.

Following very brief questioning the hearing was closed.

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Concern had been expressed that the family position would be eroded. Under this bill both can own individual property except for necessary articles. It gives partners the ability to act as individuals.

Proponent Debbie Schmidt, staff person with legislative council who worked on these bills, called to the committee's attention on page 1, section 1 where a husband and wife support each other which includes non-monetary labor and stated this is probably the most important aspect of the bill. On page 2, section 4 provides that a married woman may inventory her separate property so it can't be touched by her husband. A married person's title to property would be determined much the same as a single person's. On page 3 under section 6 earnings and money accumulated will not be liable for that of spouse except for necessary articles. She stated the rest of the bill deals with cosmetic changes.

Proponent Margaret Davis, representing the League of Women Voters, stated they support this bill. Proponent Jan Gerke, representing the women's lobby, cited figures from the Chase Manhattan Bank on the worth of a married woman who works at home.

No other proponents. No opponents. No closing. Following brief questions from committee including men's rights and both may file personal property lists, the hearing was closed.

SENATE BILL NO. 124 Senator Joe Roberts, District #11, is chief sponsor of this amendment to the criminal code which deals with definition of "knowingly". The bill on page 6 adds the definition which Professors Crowley and Elison felt was necessary. The additional language says that a person acts knowingly when aware and is defined by virtue of result. "Knowingly" is a key in any criminal intent. The fact this was left out is an oversight in the drafting of the Criminal Code and is necessary to broaden the definition of knowingly.

No proponents. No opponents. No closing. In answer to Representative Halvorson to give an explanation of not "knowingly" Representative Roberts stated that knowingly is difficult to establish for the prosecutor. This allows you to show that if he was aware by virtue of his conduct you can say knowingly.

There were no further questions and the hearing was closed.

SENATE BILL NO. 393 Senator Thomas Towe, District #34, who is chief sponsor of this measure stated this bill relates to the appointment of a legislative committee for the protection of citizens' rights. It was originally intended to be the same as the consumer counsel, it is to serve as a watchdog in general to protect citizens' rights. The committee in the Senate decided to separate it from the consumer counsel. He sees this as a watchdog, especially in activities relating to citizen rights. Sees this as a committee which would have

JUDICIARY COMMITTEE

March 10, 1975

EXECUTIVE SESSION

The fiftieth meeting of the House Judiciary Committee was called to order in Room 436 of the Capitol Building at Helena, Montana on Monday, March 10, 1975 on adjournment of the House. Representative Herb Huennekens, chairman, presided. All members were present except Representatives Halvorson, Kimble and Meloy, absent, excused.

SENATE BILL NO. 404 Senator Neil J. Lynch, District #42, is chief sponsor of this act to remove the requirement for a primary election for judicial officers when the number of candidates contesting in the primary is the same as the number of candidates to appear on the general election ballot.

Representative Hager moved BE CONCURRED IN. Representative Moore questioned whether this bill does something compelling to which Representative Yardley replied that if there are two candidates they aren't on the ballot, if one candidate he is. Chairman Huennekens stated that presumably you could knock a judge out in the primary if he is the only one running.

Motion BE CONCURRED IN failed with Representatives Yardley, Day, Hager, Lory, Anderson, Baeth, Moore and Huennekens voting no. Representatives Kimble, Vincent and Meloy and Halvorson absent.

Representative Yardley moved BE NOT CONCURRED IN. Motion carried unanimously.

SENATE BILL NO. 26 Senator Mike Greely, District #20, is chief sponsor of this act to generally revise the political criminal libel and disclaimer requirements of Montana's election laws and providing an effective date.

Representative Lory moved to amend by striking page 2, lines 13 through 17 starting with the word "and" through "circulation". Motion to amend failed by a roll call vote. Representative Lory stated he was still upset at putting a penalty on the printer. Representative Moore pointed out that once its happened you can't undo it, he wouldn't mind lowering the penalty but feels if you are going to deter the action you have got to have everyone involved in it. Representative Vincent stated he favored leaving the penalty provision in this bill and that the action of the Billings Gazette publisher in which he rejected a couple of ads shows they can handle it.

Representative Moore moved to amend by putting in the standard language from the corrupt practices act on page 2, line 16 stating the jail term will not be more than six months and the fine not more than \$1,000 or both. Motion to amend carried with Representative Lory voting no.

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Representative Baeth moved AS SO AMENDED BE CON-
CURRED IN. Motion carried in a roll call vote.

SENATE BILL NO. 15 Senator Joe Roberts is chief sponsor of this act
to provide an alternative means of ballot access
to candidates who cannot afford to pay filing fees.

Representative Lory moved BE CONCURRED IN since this
is a constitutional requirement.

Representative Moore moved to amend on page 4,
line 10 and page 3, line 21 by changing five percent to one percent. A
substitute motion by Representative Huennekens to change five percent to
two percent failed with Representatives Lester, Day, Scully, Hager, Ras-
mussen, Seifert, Lory and Anderson voting no. The motion to amend to
one percent failed with Representatives Moore and Huennekens voting yes.

Motion BE CONCURRED IN carried with Representatives
Anderson and Day voting no, Representatives Kimble, Meloy and Halvorson
absent.

SENATE BILL NO. 143 Senator Richard Colberg is chief sponsor of this act
to provide for prompt judicial review of resolutions
proposed by popular initiative.

Representative Lory questioned whether you could
move a case up to the front of the docket and was told you could.

A motion by Representative Anderson of BE NOT CON-
CURRED IN carried by a roll call vote.

SENATE BILL NO. 218 Senator Joe Roberts is chief sponsor of this act
to submit to the qualified electors of the state
an amendment to Article V, Section 2 of the Montana Constitution to reduce
the size of the Senate and House.

A majority of the committee moved BE NOT CONCURRED
IN. Motion carried with Representatives Lester, Rasmussen, Hager and
Anderson voting no.

SENATE JOINT RESOLUTION NO. 3 Senator Mike Greely is chief
sponsor of this joint resolution con-
cerning the limitation of political activities, and providing an effec-
tive date.

Following very brief discussion Representative
Scully moved BE CONCURRED IN. Motion carried unanimously.

SENATE BILL NO. 124 Senator Joe Roberts is chief sponsor of this act
to provide that awareness of the probable result
of a person's conduct constitutes knowledge.

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Representative Rasmussen questioned whether there is need for this piece of legislation, are there problems now occurring to which Representative Moore replied that you are responsible for your acts. Representative Day questioned how you define practically certain. He feels it should be absolute.

Motion BE CONCURRED IN carried with Representatives Seifert, Day and Lory voting no.

SENATE BILL NO. 77 Senator Mike Greely is chief sponsor of this act to allow public officers and employees to participate in election campaigns, and to protect them from undue employer influence.

Representative Moore moved to amend on page 5, line 25 following "employers" by inserting "and employees". He wants this added because the section is not supposed to be broader than the title.

Representative Moore moved to amend on page 7, line 14 by striking "on the job" and inserting "his" before "working hours". Representative Vincent stated he doesn't like this amendment. Representative Moore explained that anybody else can do this. You are trying to keep him from engaging in this sort of activity if not interrupting his own work.

Steve Brown stated that he really thinks what is intended is to make this broader. Are trying to keep them from taking a day off and hitting his co-workers up. Representative Moore stated he is trying to put this guy on parity with any other person by denying him the right to do anything during work hours. Chairman Huennekens stated he thinks we are trying to parallel the federal law regarding political activity.

Representative Scully suggested amendatory language of "while at his place of employment". Brief discussion followed and this language was accepted in amendment by Representative Moore.

Representative Moore moved to amend on page 7, line 11 by striking "shall" and inserting "may". Motions to amend carried unanimously.

Representative Moore moved AS SO AMENDED BE CONCURRED IN. Motion carried with Representative Hager voting no, Representatives Halvorson, Meloy and Kimble absent.

Representative Moore moved to adjourn at 6:50 PM.
Motion carried.



REPRESENTATIVE HERB HUENNEKENS
CHAIRMAN

SENATE BILL NO. 124

INTRODUCED BY ROBERTS, CETRONE

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION 94-2-101 (28), R.C.M. 1947, TO PROVIDE THAT AWARENESS OF THE PROBABLE RESULT OF A PERSON'S CONDUCT CONSTITUTES KNOWLEDGE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 94-2-101, R.C.M. 1947, is amended to read as follows:

"94-2-101. General definitions. Unless otherwise specified in the statute all words will be taken in the objective standard rather than in the subjective.

(1) "Acts" has its usual and ordinary grammatical meaning and includes any bodily movement, any form of communication, and, where relevant, includes a failure or omission to take action.

(2) "Another" means a person or persons as defined in this code other than the offender.

(3) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law, or in which a law or a regulation is particularized in its application to an individual.

(4) "Benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective, or by a common purpose or plan and which resulted in the repeated commission of the same offense or affects the same person or the same persons or the property thereof.

(8) "Conduct" means an act or series of acts, and the accompanying mental state.

(9) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(10) "Correctional institution" means the state prison, county or city jail, or other institution for the

REFERENCE BILL

1 incarceration or custody of persons under sentence for
2 offenses or awaiting trial or sentence for offenses.

3 (11) "Deception" means knowingly to:

4 (a) create or confirm in another an impression which is
5 false and which the offender does not believe to be true; or

6 (b) fail to correct a false impression which the
7 offender previously has created or confirmed; or

8 (c) prevent another from acquiring information
9 pertinent to the disposition of the property involved; or

10 (d) sell or otherwise transfer or encumber property,
11 failing to disclose a lien, adverse claim, or other legal
12 impediment to the enjoyment of the property, whether such
13 impediment is or is not of value or is not a matter of
14 official record; or

15 (e) promise performance which the offender does not
16 intend to perform or knows will not be performed. Failure to
17 perform standing alone is not evidence that the offender did
18 not intend to perform.

19 (12) "Defamatory matter" means anything which exposes a
20 person or a group, class or association to hatred, contempt,
21 ridicule, degradation or disgrace in society, or injury to
22 his or its business or occupation.

23 (13) "Deprive" means to withhold property of another:

24 (a) permanently; or

25 (b) for such a period as to appropriate a portion of

1 its value; or

2 (c) with the purpose to restore it only upon payment of
3 reward or other compensation; or

4 (d) to dispose of the property and use or deal with the
5 property so as to make it unlikely that the owner will
6 recover it.

7 (14) "Deviate sexual relations" means sexual contact or
8 sexual intercourse between two (2) persons of the same sex,
9 or any form of sexual intercourse with an animal.

10 (15) "Felony" means an offense in which the sentence
11 imposed upon conviction is death or imprisonment in the
12 state prison for any term exceeding one (1) year.

13 (16) "A frisk" is a search by an external patting of a
14 person's clothing.

15 (17) "Forcible felony" means any felony which involves
16 the use or threat of physical force or violence against any
17 individual.

18 (18) "Government" includes any branch, subdivision or
19 agency of the government of the state or any locality within
20 it.

21 (19) "Harm" means loss, disadvantage or injury, or
22 anything so regarded by the person affected, including loss,
23 disadvantage or injury to any person or entity in whose
24 welfare he is interested.

25 (20) "He, she, it." The singular term shall include the

1 plural and the masculine gender the feminine except where a
2 particular context clearly requires a different meaning.

3 (21) "A house of prostitution" means any place where
4 prostitution or promotion of prostitution is regularly
5 carried on by one (1) person under the control, management
6 or supervision of another.

7 (22) "Human being" means a person who has been born and
8 is alive.

9 (23) "An illegal article" is an article or thing which
10 is prohibited by statute, rule, regulation or order from
11 being in the possession of a person subject to official
12 detention.

13 (24) "Inmate" means a person who engages in
14 prostitution in or through the agency of a house of
15 prostitution.

16 (25) "Intoxicating substance" means any substance
17 having an hallucinogenic, depressant, stimulating, or
18 narcotic effect, taken in such quantities as to impair
19 mental or physical capability including but not limited to
20 any beverage containing one-half of one per centum (1/2 of
21 1%) or more of alcohol by volume; provided, that the
22 foregoing definition shall not extend to dealcoholized wine,
23 nor to any beverage or liquid produced by the process by
24 which beer, ale, port or wine is produced, if it contains
25 less than one-half of one per centum (1/2 of 1%) of alcohol

1 by volume.

2 (26) "An involuntary act" means any act which is:

3 (a) a reflex or convulsion; or

4 (b) a bodily movement during unconsciousness or sleep;

5 or

6 (c) conduct during hypnosis or resulting from hypnotic
7 suggestion; or

8 (d) a bodily movement that otherwise is not a product
9 of the effort or determination of the actor, either
10 conscious or habitual.

11 (27) "Juror" means any person who is a member of any
12 jury, including a grand jury, impaneled by any court in this
13 state in any action or proceeding or by any officer
14 authorized by law to impanel a jury in any action or
15 proceeding. The term juror also includes a person who has
16 been drawn or summoned to attend as a prospective juror.

17 (28) "Knowingly"--A person acts knowingly with respect
18 to conduct or to a circumstance described by a statute
19 defining an offense when he is aware of his conduct or that
20 the circumstance exists. A person acts knowingly with
21 respect to the result of conduct described by a statute
22 defining an offense when he is aware that IT IS HIGHLY
23 PROBABLE THAT such result is-practically-certain-to WILL be
24 caused by his conduct. When knowledge of the existence of a
25 particular fact is an element of an offense, such knowledge

1 is established if a person is aware of a high probability of
2 its existence. Equivalent terms such as "knowing" or "with
3 knowledge" have the same meaning.

4 (29) "Mentally defective" means that a person suffers
5 from a mental disease or defect which renders him incapable
6 of appreciating the nature of his conduct.

7 (30) "Mentally incapacitated" means that a person is
8 rendered temporarily incapable of appreciating or
9 controlling his conduct as result of the influence of an
10 intoxicating substance.

11 (31) "Misdemeanor" means an offense in which the
12 sentence imposed upon conviction is imprisonment in the
13 county jail for any term, or fine, or both or the sentence
14 imposed is imprisonment in the state prison for any term of
15 one year or less.

16 (32) "Negligently"--A person acts negligently with
17 respect to a result or to a circumstance described by a
18 statute defining an offense when he consciously disregards a
19 risk that the result will occur or that the circumstance
20 exists; or if he disregards a risk of which he should be
21 aware that the result will occur or that the circumstance
22 exists. The risk must be of such a nature and degree that to
23 disregard it involves a gross deviation from the standard of
24 conduct that a reasonable person would observe in the
25 actor's situation. Gross deviation means a deviation that is

1 considerably greater than lack of ordinary care. Relevant
2 terms such as "negligent" and "with negligence" have the
3 same meaning.

4 (33) "Obtain" means:

5 (a) in relation to property, to bring about a transfer
6 of interest or possession, whether to the offender or to
7 another; and

8 (b) in relation to labor or services, to secure the
9 performance thereof.

10 (34) "Obtains or exerts control" includes but is not
11 limited to the taking, carrying away, or the sale,
12 conveyance, or transfer of title to, or interest in, or
13 possession of property.

14 (35) "Occupied structure" means any building, vehicle
15 or other place suited for human occupancy or night lodging
16 of persons or for carrying on business, whether or not a
17 person is actually present. Each unit of a building
18 consisting of two (2) or more units separately secured or
19 occupied is a separate occupied structure.

20 (36) "Offender" means a person who has been or is
21 liable to be arrested, charged, convicted or punished for a
22 public offense.

23 (37) "Offense" means a crime for which a sentence of
24 death or of imprisonment or fine is authorized. Offenses are
25 classified as felonies or misdemeanors.

1 (38) "Official detention" means imprisonment which
2 resulted from a conviction for an offense, confinement for
3 an offense, confinement of a person charged with an offense,
4 detention by a peace officer pursuant to arrest, detention
5 for extradition or deportation, or any lawful detention for
6 the purpose of the protection of the welfare of the person
7 detained or for the protection of society; but "official
8 detention" does not include supervision of probation or
9 parole, constraint incidental to release on bail, or an
10 unlawful arrest unless the person arrested employed physical
11 force, a threat of physical force, or a weapon to escape.

12 (39) "Official proceeding" means a proceeding heard or
13 which may be heard before any legislative, judicial,
14 administrative or other governmental agency or official
15 authorized to take evidence under oath, including any
16 referee, hearing examiner, commissioner, notary or other
17 person taking testimony or deposition in connection with
18 such proceeding.

19 (40) "Other state" means any state or territory of the
20 United States, the District of Columbia and the Commonwealth
21 of Puerto Rico.

22 (41) "Owner" means a person, other than the offender,
23 who has possession of or any other interest in the property
24 involved, even though such interest or possession is
25 unlawful, and without whose consent the offender has no

1 authority to exert control over the property.

2 (42) "Party official" means a person who holds an
3 elective or appointive post in a political party in the
4 United States by virtue of which he directs or conducts, or
5 participates in directing or conducting party affairs at any
6 level of responsibility.

7 (43) "Peace officer" means any person who by virtue of
8 his office or public employment is vested by law with a duty
9 to maintain public order or to make arrests for offenses
10 while acting within the scope of his authority.

11 (44) "Pecuniary benefit" is benefit in the form of
12 money, property, commercial interests or anything else the
13 primary significance of which is economic gain.

14 (45) "Person" includes an individual, business
15 association, partnership, corporation, government, or other
16 legal entity, and an individual acting or purporting to act
17 for or on behalf of any government or subdivision thereof.

18 (46) "Physically helpless" means that a person is
19 unconscious or is otherwise physically unable to communicate
20 unwillingness to act.

21 (47) "Possession" is the knowing control of anything
22 for a sufficient time to be able to terminate control.

23 (48) "Premises" includes any type of structure or
24 building and any real property.

25 (49) "Property" means anything of value. Property

1 includes, but is not limited to, real estate, money,
2 commercial instruments, admission or transportation tickets,
3 written instruments representing or embodying rights
4 concerning anything of value, labor, or services, or
5 otherwise of value to the owner; things growing on or
6 affixed to, or found on land, or part of or affixed to any
7 building; electricity, gas and water; birds, animals and
8 fish, which ordinarily are kept in a state of confinement;
9 food and drink, samples, cultures, microorganisms,
10 specimens, records, recordings, documents, blueprints,
11 drawings, maps, and whole or partial copies, descriptions,
12 photographs, prototypes or models thereof, or any other
13 articles, materials, devices, substances and whole or
14 partial copies, descriptions, photographs, prototypes, or
15 models thereof which constitute, represent, evidence,
16 reflect or record secret scientific, technical,
17 merchandising production or management information, designed
18 process, procedure, formula, invention or improvement.

19 (50) "Property of another" means real or personal
20 property in which a person other than the offender has an
21 interest which the offender has not authority to defeat or
22 impair, even though the offender himself may have an
23 interest in the property.

24 (51) "Public place" means any place to which the public
25 or any substantial group thereof has access.

1 (52) "Public servant" means any officer or employee of
2 government, including but not limited to, legislators,
3 judges, and firemen, and any person participating as a
4 juror, advisor, consultant, administrator, executor,
5 guardian or court-appointed fiduciary; but the term does not
6 include witnesses. The term public servant includes one who
7 has been elected or designated to become a public servant.

8 (53) "Purposely"--A person acts purposely with respect
9 to a result or to conduct described by a statute defining an
10 offense if it is his conscious object to engage in that
11 conduct or to cause that result. When a particular purpose
12 is an element of an offense, the element is established
13 although such purpose is conditional, unless the condition
14 negatives the harm or evil sought to be prevented by the law
15 defining the offense. Equivalent terms such as "purpose" and
16 "with the purpose" have the same meaning.

17 (54) "Serious bodily injury" means bodily injury which
18 creates a substantial risk of death or which causes serious
19 permanent disfigurement, or protracted loss or impairment of
20 the function or process of any bodily member or organ and
21 includes serious mental illness or impairment.

22 (55) "Sexual contact" means any touching of the sexual
23 or other intimate parts of the person of another for the
24 purpose of arousing or gratifying the sexual desire of
25 either party.

1 (56) "Sexual intercourse" means penetration of the
 2 vulva, anus or mouth of one person by the penis of another
 3 person, or penetration of the vulva or anus of one person by
 4 any body member of another person or penetration of the
 5 vulva, or anus of one person by any foreign instrument or
 6 object manipulated by another person for the purpose of
 7 arousing or gratifying the sexual desire of either party.
 8 Any penetration, however slight, is sufficient.

9 (57) "Solicit" or "solicitation" means to command,
 10 authorize, urge, incite, request, or advise another to
 11 commit an offense.

12 (58) "State" or "this state" means the state of
 13 Montana, and all the land and water in respect to which the
 14 state of Montana has either exclusive or concurrent
 15 jurisdiction, and the air space above such land and water.

16 (59) "Statute" means any act of the legislature of this
 17 state.

18 (60) "Stolen property" means property over which
 19 control has been obtained by theft.

20 (61) "A stop" is the temporary detention of a person
 21 that results when a peace officer orders the person to
 22 remain in his presence.

23 (62) "Tamper" means to interfere with something
 24 improperly, meddle with it, make unwarranted alterations in
 25 its existing condition, or deposit refuse upon it.

1 (63) "Threat" means a menace, however communicated to:
 2 (a) inflict physical harm on the person threatened or
 3 any other person or on property; or
 4 (b) subject any person to physical confinement or
 5 restraint; or
 6 (c) commit any criminal offense; or
 7 (d) accuse any person of criminal offense; or
 8 (e) expose any person to hatred, contempt or ridicule;
 9 or
 10 (f) harm the credit or business repute of any person;
 11 or
 12 (g) reveal any information sought to be concealed by
 13 the person threatened; or
 14 (h) take action as an official against anyone or
 15 anything, or withhold official action, or cause such action
 16 or withholding; or
 17 (i) bring about or continue a strike, boycott, or other
 18 similar collective action if the property is not demanded or
 19 received for the benefit of the groups which he purports to
 20 represent; or
 21 (j) testify or provide information or withhold
 22 testimony or information with respect to another's legal
 23 claim or defense.
 24 (64) (a) "Value" means the market value of the property
 25 at the time and place of the crime, or if such cannot be

1 satisfactorily ascertained, the cost of the replacement of
2 the property within a reasonable time after the crime. If
3 the offender appropriates a portion of the value of the
4 property, the value shall be determined as follows:

5 (i) The value of an instrument constituting an evidence
6 of debt, such as a check, draft or promissory note, shall be
7 deemed the amount due or collectible thereon or thereby,
8 such figure ordinarily being the face amount of the
9 indebtedness less any portion thereof which has been
10 satisfied.

11 (ii) The value of any other instrument which creates,
12 releases, discharges, or otherwise affects any valuable
13 legal right, privilege or obligation shall be deemed the
14 amount of economic loss which the owner of the instrument
15 might reasonably suffer by virtue of the loss of the
16 instrument.

17 (b) When it cannot be determined if the value of the
18 property is more or less than one hundred fifty dollars
19 (\$150) by the standards set forth in subsection (64) (a)
20 above, its value shall be deemed to be an amount less than
21 one hundred fifty dollars (\$150).

22 (c) Amounts involved in thefts committed pursuant to a
23 common scheme or the same transaction, whether from the same
24 person or several persons, may be aggregated in determining
25 the value of the property.

1 (65) "Vehicle" means any device for transportation by
2 land, water or air, or mobile equipment with provision for
3 transport of an operator.

4 (66) "Weapon" means any instrument, article or
5 substance which, regardless of its primary function, is
6 readily capable of being used to produce death or serious
7 bodily injury.

8 (67) "Witness" means a person whose testimony is
9 desired in any proceeding or in any investigation by a grand
10 jury or in a criminal action, prosecution or proceeding.

11 (68) "Without consent" means:

12 (a) the victim is compelled to submit by force or by
13 threat of imminent death, bodily injury, or kidnapping, to
14 be inflicted on anyone; or

15 (b) the victim is incapable of consent because he is:

16 (i) mentally defective or incapacitated; or

17 (ii) physically helpless; or

18 (iii) less than sixteen (16) years old."

-End-